

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BOARD OF TRUSTEES OF THE KERN
COUNTY ELECTRICAL WORKERS
PENSION FUND, *et al*

Plaintiffs,

v.

MEASUREMENT
INSTRUMENTATION AND
CONTROLS, INC., *et al*.

Defendants.

Case No. 1:23-cv-00744-ADA-CDB

SCHEDULING ORDER (Fed. R. Civ. P. 16)

Discovery Deadlines:

- Rule 26 Disclosures: October 19, 2023
- Expert Disclosures: April 22, 2024
- Rebuttal Disclosures: May 6, 2024
- Fact Discovery Cut-Off: April 8, 2024
- Expert Discovery Cut-Off: June 12, 2024
- Mid-Discovery Status Conference: February 29, 2024, at 9:30 a.m., in Bakersfield Federal Courthouse 510 19th Street, Bakersfield, CA 93301

Non-Dispositive Motion Deadlines:

- Filing: June 26, 2024
- Hearing: On August 5, 2024, at 10:30 a.m., Bakersfield Federal Courthouse

Dispositive Motion Deadlines:

- Filing: August 19, 2024
- Hearing: On/before September 23, 2024, 1:30 p.m, in Robert E. Coyle Federal Courthouse, Fresno, Courtroom 1, 8th Floor

Pre-Trial Conference: March 3, 2025, at 1:30 p.m., in Fresno Federal Courthouse

Trial: April 29, 2025, at 8:30 a.m, in Fresno Federal Courthouse

1 Plaintiffs initiated this action on May 14, 2023. (Doc. 1). Plaintiffs raises the following
2 claims against Defendants (1) violation of ERISA, and (2) accounting.

3 **I. Date of Scheduling Conference**

4 October 5, 2023, before Magistrate Judge Christopher D. Baker.

5 **II. Appearances of Counsel**

6 Tiffany Dawn Lena appeared on behalf of Plaintiffs.

7 Donald Charles Oldaker appeared on behalf of Defendant Key Staffing, Inc.

8 Bryan L. Hawkins appeared on behalf of Defendants Measurement Instrumentation and
9 Controls, Inc., Key Electric, Inc., Robert David Smith, and Sharyn Smith.

10 **III. Magistrate Judge Consent:**

11 Currently there is no joint consent to magistrate judge jurisdiction.

12 **Notice of Congested Docket and Court Policy of Trailing**

13 Due to the District Judges' heavy caseload, the adopted policy of the Fresno Division of the
14 Eastern District is to trail all civil cases. The parties are hereby notified that for a trial date set before a
15 District Judge, the parties will trail indefinitely behind any higher priority criminal or older civil case
16 set on the same date until a courtroom becomes available. The trial date will not be reset.

17 The Magistrate Judges' availability is far more realistic and accommodating to parties than that
18 of the District Judges who carry the heaviest caseloads in the nation and who must prioritize criminal
19 and older civil cases over more recently filed civil cases. A Magistrate Judge may conduct trials,
20 including entry of final judgment, pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73,
21 and Local Rule 305. Any appeal from a judgment entered by a Magistrate Judge is taken directly to the
22 United States Court of Appeal for the Ninth Circuit.

23 Therefore, the parties are directed to consider consenting to Magistrate Judge jurisdiction to
24 conduct all further proceedings, including trial, and to file a consent/decline form (provided by the
25 Court at the inception of this case) indicating whether they will consent to the jurisdiction of the
26 Magistrate Judge.

27 **IV. Pleading Amendment**

28 Any motions to amend the pleadings must be filed by **December 5 2023**. The parties are

1 advised that filing a motion and/or stipulation requesting leave to amend the pleadings does not reflect
2 on the propriety of the amendment or imply good cause to modify the existing schedule, if necessary.
3 All proposed amendments must (A) be supported by good cause pursuant to Fed. R. Civ. P. 16(b) if the
4 amendment requires any modification to the existing schedule, *see Johnson v. Mammoth Recreations,*
5 *Inc.*, 975 F.2d 604, 609 (9th Cir. 1992), and (B) establish, under Fed. R. Civ. P. 15(a), that such an
6 amendment is not (1) prejudicial to the opposing party, (2) the product of undue delay, (3) proposed in
7 bad faith, or (4) futile, *see Foman v. Davis*, 371 U.S. 178, 182 (1962).

8 **V. Discovery Plan and Cut-Off Date**

9 The parties shall exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1) by no later
10 than **October 19, 2023**.

11 The parties are ordered to complete all discovery pertaining to non-experts on or before **April 8,**
12 **2024**, and all discovery pertaining to experts on or before **June 12, 2024**.

13 The parties are directed to disclose all expert witnesses¹, in writing, on or before **April 22,**
14 **2024**, and to disclose all rebuttal experts on or before **May 6, 2024**. The written designation of retained
15 and non-retained experts shall be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B), and (C) and
16 shall include all information required thereunder. Failure to designate experts in compliance with this
17 order may result in the Court excluding the testimony or other evidence offered through such experts
18 that are not disclosed pursuant to this order.

19 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to experts
20 and their opinions. Experts must be fully prepared to be examined on all subjects and opinions
21 included in the designation. Failure to comply will result in the imposition of sanctions, which may
22 include striking the expert designation and preclusion of expert testimony.

23 The provisions of Fed. R. Civ. P. 26(e) regarding a party's duty to timely supplement
24 disclosures and responses to discovery requests will be strictly enforced.

25 A mid-discovery status conference is scheduled for **February 29, 2024**, at 9:30 a.m. before
26
27

28 ¹ In the event an expert will offer opinions related to an independent medical or mental health
evaluation, the examination SHALL occur sufficiently in advance of the disclosure deadline so the
expert's report fully details the expert's opinions in this regard.

1 Magistrate Judge Christopher D. Baker. Counsel SHALL file a joint mid-discovery status conference
2 report no later than one week before the conference. Counsel also SHALL lodge the joint status report
3 via e-mail to CDBorders@caed.uscourts.gov. The joint status report SHALL outline the discovery
4 counsel have completed and that which needs to be completed as well as any impediments to
5 completing the discovery within the deadlines set forth in this order. Counsel SHALL discuss
6 settlement and certify in the joint status report (1) that they have met/conferred regarding settlement,
7 and (2) proposed dates for convening a settlement conference before a U.S. magistrate judge.

8 **VI. Pre-Trial Motion Schedule**

9 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
10 than **June 26, 2024²** and heard on or before **August 5, 2024**. Discovery motions shall be set before
11 Magistrate Judge Baker. For these hearings and at the direction of the Courtroom Deputy Clerk, the
12 Court may direct counsel to appear remotely (via Zoom). For hearings noticed to occur in-person, the
13 Court may permit counsel to appear remotely (via Zoom) provided the Courtroom Deputy Clerk
14 receives a written notice of the request to appear remotely no later than five court days before the
15 noticed hearing date. All other non-dispositive hearings SHALL be set before Judge de Alba.

16 No motion to amend or stipulation to amend the case schedule will be entertained unless it is
17 filed at least one week before the first deadline the parties wish to extend. Likewise, no written
18 discovery motions shall be filed without the prior approval Magistrate Judge Baker. A party with a
19 discovery dispute must first confer with the opposing party in a good faith effort to resolve by
20 agreement the issues in dispute. If that good faith effort is unsuccessful, the moving party promptly
21 shall seek a hearing with all involved parties and Magistrate Judge Baker. To schedule this hearing, the
22 parties are ordered to contact the Courtroom Deputy Clerk, Susan Hall, at (661) 326-6620 or via email
23 at SHall@caed.uscourts.gov. At least three days before the conference, counsel SHALL file informal
24 letter briefs detailing their positions. The briefs may not exceed 7 pages, excluding exhibits. Counsel
25 must comply with Local Rule 251 with respect to discovery disputes or the motion will be denied
26

27
28 ² Non-dispositive motions related to non-expert discovery SHALL be filed within a reasonable
time of discovery of the dispute, but in no event later than 30 days after the expiration of the non-
expert discovery deadline.

1 without prejudice and dropped from the Court's calendar.

2 All dispositive pre-trial motions shall be filed no later than **August 19, 2024**, and heard no later
3 than **September 23, 2024**, in Courtroom 1 at 1:30 p.m. before the Honorable Ana de Alba, United
4 States District Judge. In scheduling such motions, counsel shall comply with Fed. R. Civ. P. 56 and
5 Local Rules 230 and 260.

6 **VII. Motions for Summary Judgment or Summary Adjudication**

7 At least 21 days before filing a motion for summary judgment or motion for summary
8 adjudication, the parties are ORDERED to meet, in person or by telephone, to confer about the issues to
9 be raised in the motion.

10 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a
11 question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole
12 or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the
13 issues for review by the court; 5) explore the possibility of settlement before the parties incur the
14 expense of briefing a motion; and 6) to develop a joint statement of undisputed facts.

15 The moving party SHALL initiate the meeting and SHALL provide a complete, proposed
16 statement of undisputed facts at least five days before the conference. The finalized joint statement of
17 undisputed facts SHALL include all facts that the parties agree, for purposes of the motion, may be
18 deemed true. In addition to the requirements of Local Rule 260, the moving party shall file the joint
19 statement of undisputed facts.

20 In the notice of motion, the moving party SHALL certify that the parties have met and
21 conferred as ordered above or set forth a statement of good cause for the failure to meet and confer.
22 Failure to comply may result in the motion being stricken.

23 **VIII. Pre-Trial Conference Date**

24 **March 3, 2025**, at 1:30 p.m. in Courtroom 1 before the Honorable Ana de Alba, United States
25 District Judge.

26 The parties are ordered to file a Joint Pretrial Statement pursuant to Local Rule 281(a)(2). The
27 parties are further directed to submit a digital copy of their pretrial statement in Word format, directly
28 to Judge de Alba's chambers, by email at ADAorders@caed.uscourts.gov.

Counsels' attention is directed to Rules 281 and 282 of the Local Rules of Practice for the Eastern District of California, as to the obligations of counsel in preparing for the pre-trial conference. The Court will insist upon strict compliance with those rules. In addition to the matters set forth in the Local Rules the Joint Pretrial Statement shall include a Joint Statement of the case to be used by the Court to explain the nature of the case to the jury during voir dire.

IX. Trial Date

April 29, 2025, at 8:30 a.m. in Courtroom 1 before the Honorable Ana de Alba, United States District Judge.

- A. This is a jury trial.
- B. Counsels' Estimate of Trial Time: 3-5 days
- C. Counsels' attention is directed to Local Rules of Practice for the Eastern District of California, Rule 285.

X. Settlement Conference

The parties are advised that Judge de Alba requires that a mandatory settlement conference be conducted prior to trial by a federal judge. Where the parties filed a summary judgment/adjudication motion, a settlement conference shall be scheduled 30 days after the motion is fully briefed. In cases where the parties do not file a summary judgment/adjudication motions, a settlement conference shall be scheduled 30 days after the last day for the filing of dispositive motions. Unless otherwise requested by the parties, the Settlement Conference will be set before Magistrate Judge Baker.

XI. Request for Bifurcation, Appointment of Special Master, or other

Techniques to Shorten Trial

Not applicable at this time.

XII. Related Matters Pending

There are no pending related matters.

XIII. Compliance with Federal Procedure

All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure and the Local Rules of Practice of the Eastern District of California, and to keep abreast of any amendments thereto. The Court must insist upon compliance with these Rules if it is to efficiently

1 handle its increasing case load and sanctions will be imposed for failure to follow both the Federal
2 Rules of Civil Procedure and the Local Rules of Practice for the Eastern District of California.

3 **IVX. Effect of this Order**

4 The foregoing order represents the best estimate of the court and counsel as to the agenda most
5 suitable to dispose of this case. The trial date reserved is specifically reserved for this case. If the
6 parties determine at any time that the schedule outlined in this order cannot be met, counsel are ordered
7 to notify the court immediately of that fact so that adjustments may be made, either by stipulation or by
8 subsequent status conference.

9 **The dates set in this Order are considered to be firm and will not be modified absent a**
10 **showing of good cause even if the request to modify is made by stipulation. Stipulations**
11 **extending the deadlines contained herein will not be considered unless they are accompanied by**
12 **affidavits or declarations, and where appropriate attached exhibits, which establish good cause**
13 **for granting the relief requested.**

14 **Failure to comply with this order may result in the imposition of sanctions.**
15 IT IS SO ORDERED.

16 Dated: **October 10, 2023**

17 
18 UNITED STATES MAGISTRATE JUDGE